



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

DEC 22 2016

OFFICE OF
SOLID WASTE AND
EMERGENCY RESPONSE

NOW THE
OFFICE OF LAND AND
EMERGENCY MANAGEMENT

Mr. Kurt Anderson
Director, Environmental and Land Management
ALLETE Minnesota Power
30 West Superior Street
Duluth, Minnesota 55802

Dear Mr. Anderson:

Thank you for your letter dated November 16, 2016, presenting a more detailed explanation for your interpretation that the Taconite Harbor Landfill is exempt from the requirements in 40 C.F.R. part 257, subpart D. In summary, you claim that your Coal Combustion Residual (CCR) landfill is exempt from these requirements as an "inactive landfill" pursuant to 40 C.F.R. 257.50(d), even though you placed CCR into that unit after the effective date of the rule. You further claim that the activity involving placement of CCR into the unit constituted beneficial use, which is exempt under 40 C.F.R. 257.50(g). However, nothing in your letter alters our conclusion that your landfill does not qualify for the exemption at 257.50(d). Therefore it is an active CCR landfill, subject to all of the requirements applicable to an "existing CCR landfill" under section 257, subpart D.

As we explained during our November 10th phone call, by placing CCR into your CCR landfill after the effective date of the rule, based on the plain language of the regulation, this unit no longer qualifies for the exemption at 257.50(d). This provision applies only to CCR landfills "that have ceased receiving CCR prior to October 19, 2015," without regard to whether that receipt is characterized as disposal or beneficial use. Note as well that, contrary to your claim, the Taconite Harbor landfill meets the definition of an "existing CCR landfill" ("a CCR landfill that receives CCR both before and after October 19, 2015") 40 C.F.R. 257.53. See also the definitions of "active life" and "active portion," which use the terms "placement of CCR in the CCR unit" and "has received or is receiving." None of these definitions use the term "disposal." Accordingly, by the express terms of these provisions, whether your activity constitutes beneficial use is irrelevant.

Your letter raised concern about the interplay between the general exemption for beneficial use activities under 40 C.F.R. 257.50(g) and the exemption at 40 C.F.R. 257.50(d); in essence, you argue that the EPA must interpret the term "receipt" to exclude all alleged beneficial use activities because such activities are exempt under 257.50(g).

Had the EPA intended the interpretation you propose the regulatory text would not have focused exclusively on receipt of CCR, but would have used the word "disposal," which actually is defined to exclude beneficial use. See 40 C.F.R. 257.53. Alternatively, the EPA would have included an express

exception within 257.50(d) or at least a cross-reference to 257.50(g). See, e.g., 257.50(b)(“Unless otherwise provided in this subpart...”) and 257.104(a)(“Except as provided by either paragraph (a)(2) or (3) of this section”). Because your interpretation would effectively revise the regulation (and greatly expand the exemption), the EPA cannot accept it.

Finally, with respect to your concern that this is inconsistent with EPA’s statements that beneficial use operations would be exempt from the CCR rule provisions, we note that you acknowledge that the Taconite Harbor landfill is a CCR landfill, and not a beneficial use operation. Thus the net effect of the regulatory provisions referenced above is merely the regulation of your CCR landfill, which was precisely the kind of operation that the rules were designed to cover. See, e.g., 80 Federal Register 21,348 (purpose of the beneficial use criteria is to distinguish between “legitimate beneficial use” and “activities that have consistently been considered to be disposal;” the fourth criterion “directly correlates to the practices and the risks that the disposal regulations are designed to address: the risks associated with the placement of large quantities of CCR in a single concentrated location, such as a CCR landfill,...”). We further note that this result is consistent with the regulatory determination made by your state regulatory authority. We understand that Minnesota considers the use of CCR to facilitate closure as “...ongoing utilization of the Taconite Harbor Energy Center landfill for disposal of a permitted industrial solid waste,” and also considers the unit to be active.

As we explained during our phone conversation, the Taconite Landfill remains on the open dump list. The EPA intends to publish the final list on January 13, 2016. If prior to that date you provide evidence to the EPA that your unit has come into compliance with the requirements of 40 C.F.R. 257, subpart D, the EPA will remove your facility from the list.

Sincerely,

A handwritten signature in black ink, appearing to read "Barnes Johnson", with a long horizontal flourish extending to the right.

Barnes Johnson, Director
Office of Resource Conservation and Recovery

cc: Margaret Guerriero

U.S. EPA Region 5